



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. Mario Aguilar
Senior Attorney
Texas Department of Housing
and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR94-877

Dear Mr. Aguilar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28485.

The Texas Department of Housing and Community Affairs (the "department") has received a request for "a copy of the application form submitted on July 29, 1994 by Oak Cliff Ltd. Partnership." You inform us that the application was submitted relative to the Low Income Tax Credit Program, which provides for the set-aside of a percentage of rental housing projects for low income individuals and results in a tax benefit for the housing developer. You indicate that the department will provide the requested information except for certain documents that Oak Cliff has expressed a desire to have withheld. Those documents have been designated as Schedule A (a list of prior developments), Exhibits 23 and 103 (assignments of contracts of sale), and Exhibit 113 (financial and credit statement).

Pursuant to section 552.305 of the Government Code, we have notified Oak Cliff, the third party whose interests are implicated by this request for information. Oak Cliff claims that Schedule A and Exhibits 23 and 103 constitute trade secrets and are protected from public disclosure by section 552.110 of the Government Code. Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.¹

We conclude that Oak Cliff has not made a prima facie case that the requested information constitutes trade secrets. Schedule A essentially is no more than a review of single events in Oak Cliff's business, that is, a list of prior projects. It does not reveal information about "a process or device for continuous use in the operation of

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

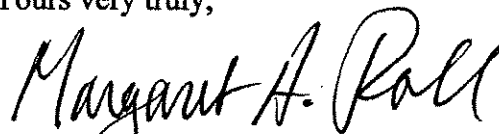
the business.” Although Oak Cliff likens Schedule A to a customer list, it is nothing more than a compilation and analysis of single events. In regard to Schedule A and exhibits 23 and 13, Oak Cliff lists the six elements which the Restatement gives as indicia of trade secrets, but supplies no specific facts or actions taken by the company to establish that any of the documents contain trade secrets. Accordingly, we conclude that Oak Cliff has not made a prima facie case that any of these documents contains trade secrets; they may not be withheld from required public disclosure under the trade secrets branch of section 552.110 and must be released in their entirety.

Oak Cliff also claims that Exhibits 23 and 103, assignments of contracts of sale of real property, are excepted under section 552.105 of the Government Code, which excepts from required public disclosure information related to the location or price of real property. However, section 552.105 “was designed to protect a governmental body’s planning and negotiation position with respect to particular transactions.” Open Records Decision No. 564 (1990) at 2. The department has not claimed that section 552.105 protects this information, therefore it is not applicable. Exhibits 23 and 103 must be released.

Oak Cliff claims that Exhibit 113, a financial statement, is excepted from disclosure under sections 552.101, 552.104, and the commercial and financial information arm of section 552.110. The “commercial and financial information” exception applies only where information is made confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 7-8. Oak Cliff, while claiming this exception, cites neither a statute nor a case that would protect the financial statement from public disclosure, nor have we located such authority. Furthermore, this office has said that the “mere expectation of confidentiality by the individual supplying the information is not enough to satisfy the ‘by statute or judicial decision’ requirement of section [552.110]” or section 552.101. Open Records Decision No. 203 (1978). Finally, section 552.104 may only be claimed by a governmental body to protect its interests and may not be raised by private parties. Open Records Decision No. 592 at 8. Therefore exhibit 113 must also be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Margaret A. Roll". The signature is written in dark ink and is positioned above the printed name and title.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/PIR/rho

Ref.: ID# 28485

Enclosures: Submitted documents

cc: Mr. Robert Stimson
Dallas City Councilmember
City Hall
Office of the City Council
Dallas, Texas 75201
(w/o enclosures)

Mr. Richard M. Lannen
Lannen & Oliver, P.C.
3800 Bank One Center
1717 Main Street, PB49
Dallas, Texas 75201
(w/o enclosures)